

**ADVISORY OPINION**  
**CASE NO. 98043.A**  
**Post-Employment**

To: [John ], [Director ]  
[Department 1]

Date: October 21, 1998

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You were [Director ] in [Bureau X ] in [Department 1] until October 15, when you left City service. In a meeting with staff September 3 and a letter of October 1, 1998, you asked for an advisory opinion about how the Governmental Ethics Ordinance will apply to you in a post-City position with [Alpha Organization, ("Alpha")], a non-profit agency that currently has contracts with [Department 1] and other City departments.

This advisory opinion contains the facts you presented, as well as our analysis and determinations.

**FACTS:** Your City experience and background. You have a master's degree in clinical psychology. You have worked for the City of Chicago for 17 years. Your first position, held from January 1982 through December 1991, was in [Department 2], where you trained City staff and, near the end of your tenure there, consulted on management and organizational development for some departments, including [Department 3], [Department 4] and [Department 5]. From March 1992 to November 1994, you were [Director ] with [Department 6]. From November 1994 to the present, you have been [Director ] in [Bureau X] in [Department 1].

Your post-City employment with [Alpha]. You said that [Jane ], Executive Director of [Alpha], approached you and offered you a position as Program Director with [Alpha], which you accepted. You also stated that, as [Alpha]'s Program Director, you may be asked to work on [Alpha]'s continuing project with [Department 1] and on its projects with other City departments, as well as with other governments.

[Alpha] is a non-partisan, non-profit organization affiliated with [a local university] whose mission is, according to a [Alpha] brochure, to [assist government agencies in performing their work

]. It seeks to fulfill this mission by providing various consulting services designed for government agencies at an affordable price. For example, [Alpha] facilitates government

agencies' long-range planning meetings and helps them implement means of evaluation to determine how effective their programs are.

[Alpha] works with a variety of government entities in Illinois, including the Cook County [Agency A ] and [Department B] and the State of Illinois [Department C]. The City of Chicago and its sister agencies, you estimate, account for 30 to 40 percent of [Alpha]'s business. In addition to its work with [Department 1], you said, [Alpha] currently has contracts with the City of Chicago [Department 7], [Department 8], and [Department 9], and is seeking contracts with [Department 10], [Department 11], and [Department 12]. You said you have no knowledge of the specific subject matter of these contracts. You also said you have never worked with any of these six departments on organizational effectiveness or management issues.

[Alpha] employs a full-time staff of six, including an Executive Director, Program Director, Development Manager, and Business Manager, and it works with a pool of some 14 independent consultants who do most of the direct consulting for [Alpha]'s contracts. You said your primary responsibilities as Program Director will be to manage [Alpha]'s independent consultants on its major accounts. As director of these accounts, you said, your role would be administrative (e.g., deciding which independent consultants should work on which contract), and you would provide little hands-on consulting services. Ten to twenty percent of your time, you said, would be spent marketing [Alpha]'s services to new clients. You also said that you may provide direct consulting services (e.g., facilitating meetings and retreats) on some of [Alpha]'s smaller, non-City accounts, such as not-for-profit organizations.

[Alpha]'s contracts with [Department 1]. [Department 1] originally hired [Alpha] in August 1994 to help develop and implement the department's "3-Year Strategic Plan." This plan, in effect for the years 1995-1998, seeks to increase [Department 1]'s organizational effectiveness by improving various management and communication procedures between bureaus and with other agencies and companies it works with. For example, the plan calls on [Department 1] to better identify project responsibility within the department, (because responsibility is often spread across bureaus) and to establish a department-wide needs-based planning strategy. Explaining needs-based planning strategy, you gave the example of the need for a safety director that surfaced through the planning process when it was recognized that, due to the amount of heavy lifting and often hazardous work (e.g., [ ]), there were numbers of accidents in various bureaus that could be reduced; the department then planned and budgeted for a safety director to monitor accidents, conduct training, and follow up on whether the preventive measures were effective. You indicated that the strategic plan is scheduled to be updated, with [Alpha]'s assistance, to reflect the department's accomplishments and changing priorities. The new "5-Year Strategic Plan" is scheduled to be in effect from 1999 through 2003.

[Alpha]'s first contract with [Department 1] expired at the end of calendar year 1995. Following this initial contract, [Department 1] entered into three consecutive one-year contracts with [Alpha], covering calendar years 1996, 1997, and 1998. You said that each was a discrete and separate

contract, negotiated to reflect [Department 1]'s specific needs for the given year. The services the contracts called on [Alpha] to provide, as well as the price, you said, changed from year to year. For example, in the first contract, [Alpha] helped [Department 1] formulate department-wide strategic goals and determine the changes needed to achieve them, while the 1996 contract called for [Alpha]'s help in developing Process Improvement Teams within the department—process improvement includes, for example, strengthening the inquiry and information process, using base lines, flow charts and follow-up, to ensure that the 30,000 public calls [Department 1] gets each year are properly directed and responded to. The 1997 contract called on [Alpha] to assist in developing bureau-specific strategic plans for the bureaus within [Department 1], analogous to the department-wide plan developed earlier.

[Alpha]'s current contract with [Department 1] is set to expire December 31, 1998. Its next contract with [Department 1], though not yet formally written, you said, is scheduled to take effect on January 1, 1999 and extend through the end of the 1999 calendar year.

Your work at [Department 1]. You said that your primary responsibility as [Director] with [Department 1] has been to oversee the training and development within the department necessary for carrying out [Department 1]'s 3-year strategic plan. You said your main duties have been managerial and administrative, rather than the direct training of departmental employees. For example, you have periodically assessed training needs, both at the department and bureau levels, and overseen [Department 1]'s management development program, college degree assistance program, and computer training program. In addition, at the request of the Commissioner, [ ], you have been what you called an "internal consultant" to the department's [ Council], a committee consisting of the Commissioner and senior staff that monitors the department's improvement efforts in connection with its strategic plans.

Your participation in [Alpha]'s City contracts. As noted, you began as [Director] with [Department 1] in November 1994, several months after the initial contract with [Alpha] was negotiated and took effect. Although you did not assist in formulating that contract, you said that, as [Director], you worked closely and regularly with [Alpha] consultants and monitored [Alpha]'s performance to ensure that it was meeting the requirements of the contract. In each of [Alpha]'s subsequent contracts with [Department 1], you said, you have continued to work with [Alpha]'s consultants and to monitor performance.

Following the initial contract, you not only oversaw the execution of [Alpha]'s contracts with [Department 1], but also assisted in formulating them. You described the process through which these contracts, covering calendar years 1996, 1997, and 1998, were formulated as follows:

You met with [Alpha] consultants to discuss [Department 1]'s needs for the following year and develop a plan for the services [Alpha] would provide in light of those needs. You then presented this plan, in the form of a "scope of work recommendation," to [Department 1] senior staff during departmental budget meetings. You said that others in the department then formally drew up the

terms of the contract, negotiating these with [Alpha]'s independent consultants who worked on the contract with [Department 1]. You said that throughout the formal process of writing the contract, those responsible for drawing up the terms consulted you, as [Department 1]'s [program] expert, about whether specific items in the contract were appropriate. [The Department 1 Commissioner] gave final approval to the completed contract.

For the 1999 contract, you stated that, in conjunction with [Alpha] consultants, you drew up a "scope of work recommendation" that described the tasks the 1999 contract would call on [Alpha] to perform and presented this to [Department 1] staff in budget meetings. Beyond this, you stated, you did not participate in formulating this particular contract.

Finally, you said that you have not worked with [Alpha] or its consultants in your previous City positions.

**LAW AND ANALYSIS:** Section 2-156-100(b) of the Ethics Ordinance, "Post-Employment Restrictions," states in relevant part:

**No former official or employee shall, for a period of one year after the termination of the official's or employee's term of office or employment, assist or represent any person in any business transaction involving the City or any of its agencies, if the official or employee participated personally and substantially in the subject matter of the transaction during his term of office or employment; provided, that if the official or employee exercised contract management authority with respect to a contract this prohibition shall be permanent as to that contract.**

To "assist" or "represent" a person in business transactions involving the City encompasses helping a person to seek a contract as well as helping a person to perform a contract. (See Case No. 92035.A.) The Ordinance defines "contract management authority" as:

**personal involvement in or direct supervisory responsibility for the formulation or execution of a City contract, including without limitation the preparation of specifications, evaluation of bids or proposals, negotiation of contract terms or supervision of performance. (§2-156-010(g))**

This section of the Ordinance imposes both a one-year and a permanent prohibition on former City employees' post-employment activities. The one-year prohibition begins on the date City employment ends, not on the date an employee stops participating in specific projects or transactions. We will analyze each of these prohibitions in turn with respect to your employment with [Alpha].

The One-Year Prohibition. Under the one-year prohibition, you are prohibited for one year from the date you leave your City job from assisting or representing [Alpha] or any other person in any

business transaction involving the City if you participated personally and substantially in the subject matter of that transaction while you worked for the City.

The business transactions with the City you said you may be asked to work on as an [Alpha] employee are (1) [Alpha]'s continuing work with [Department 1], and (2) [Alpha]'s work with other City departments. We will analyze the one-year prohibition as it applies to each type of transaction in turn.

**[Alpha]'s continuing work with [Department 1].** The subject matter of [Alpha]'s continuing transactions with the [Department 1], as the Board understands it based on the facts you presented, is [Department 1]'s effort to improve its organizational effectiveness through strategic planning and implementation of the plans. This project includes, among other things, training and developing department staff in light of the strategic plan, and improving financial planning within the department.

From the facts presented here, it is clear that you participated personally and substantially in the subject matter of [Alpha]'s continuing transaction with [Department 1] while employed by that department. Under the Ethics Ordinance, therefore, you will be prohibited for one year after you leave City employment, or until October 15, 1999, from assisting or representing [Alpha] in its continuing work with [Department 1] that involves improving [the department's] organizational effectiveness through strategic planning and implementation of the plans.

Note that this one-year prohibition applies both to providing consulting services to the department yourself and to managing, advising or supervising [Alpha]'s outside consultants working on transactions with [Department 1] on this subject matter. In light of this prohibition, we recommend that you ensure you have no accountability within [Alpha] (e.g., for signing documents or making decisions in another's place) for its ongoing transaction with [Department 1] until the one-year prohibition expires. Further, under this one-year restriction you will be prohibited until October 15, 1999 from assisting or representing [Alpha] in seeking any contracts with [Department 1] involving the department's effort to improve organizational effectiveness.

**[Alpha]'s work with other City Departments.** As you said, you have no specific knowledge about the contracts [Alpha] currently has, or is seeking, with City departments other than [Department 1]; you also said you have never worked with these departments on organizational matters at all. With respect to your working on these contracts, the Ordinance's post-employment restrictions do not prohibit you in general from assisting or representing [Alpha] in transactions with other City departments. However, the Ordinance does prohibit you for one year after leaving your City job from working on [Alpha] projects with other City departments if you participated personally and substantially in the subject matter of the particular project as a City employee. If, before the Ordinance's one-year prohibition expires you are asked to manage or do other work, including marketing, on a [Alpha] project with a City department in which the subject matter of the project is

closely related to your City work (e.g., you worked closely with that department on a similar project while you were with the City), we advise you to seek guidance from the Board of Ethics.

The Permanent Prohibition. The Ethics Ordinance permanently prohibits former City employees from assisting or representing persons or entities in connection with City contracts if the former employee exercised contract management authority with respect to that contract while employed by the City. For purposes of the Ordinance, "contract management authority" encompasses both preparation of specifications and supervision of performance. As described above, you said you participated in either or both the preparation of specifications and/or the supervision of performance in each of [Alpha]'s contracts with [Department 1] between August 1994 and the present, including the sole current [Alpha] contract that ends on December 31, 1998, and thus you exercised contract management authority over each of these contracts. We conclude that under the Ordinance's provision on post-employment you are permanently prohibited from assisting or representing [Alpha] in connection with the current contract; however, since it will expire December 31 while you are still subject to the one-year prohibition, the prohibition is duplicative with the one-year prohibition, discussed above.

With respect to [Alpha]'s 1999 contract with [Department 1], scheduled to take effect January 1, 1999 and expire December 31, 1999 you said you drew up a "scope of work recommendation" that described the tasks the 1999 contract would call on [Alpha] to perform, and presented this to [Department 1] senior staff in departmental budget meetings. As yet, you said, there is no formally written contract for 1999 with [Alpha].

In a past case, Case No. 94044.A, the Board determined that a City employee's activities prior to a City contract did constitute personal involvement in the preparation of contract specifications, and therefore that he had contract management authority over the ensuing contract, even though no contract had yet been negotiated. In that instance, the employee inspected City property for a future contract to dispose of property, determined that the City should retain certain easements in it, and conferred with the Law Department about the goals of a reappraisal of this property, all with the aim of facilitating the City's recalculation of the parcel's price for a new contract. (See Case No. 94044.A, p. 11). This preparatory work significantly shaped the ultimate contracts; it set their basic terms. By contrast, the Board determined in the same case that the employee's gathering of information that would later be used when his department formally prepared some contracts, was not personal involvement in formulating an actual City contract. (See Case No. 94044.A, pp. 8-9.)

It is our opinion that your role in the creation of the 1999 contract with [Alpha], namely, drawing up a scope of work document that indicates specific departmental needs and discusses how [Alpha] will assist [Department 1] in addressing those needs, will significantly shape the contract when it is formally written. It is the Board's opinion, then, based in part on Case No. 94044, that you were personally involved in the formulation of [Alpha]'s 1999 contract with [Department 1], even though no contract has been negotiated or formally written. Based on the facts of the case and Board precedent, the Board concludes that you exercised contract management authority with respect to

[Alpha]'s scheduled 1999 contract with [Department 1], and that you are therefore permanently prohibited by Ordinance Section 2-156-100(b) from assisting [Alpha], or any other person or entity, in connection with it.

**DETERMINATIONS:** The Board determines that the Ethics Ordinance prohibits you for one year after you leave City employment, or until October 15, 1999, from assisting or representing [Alpha] in its continuing work with [Department 1] to improve the department's organizational effectiveness through strategic planning and implementation of the plans. The Board advises that the Ordinance does not prohibit you in general from working on [Alpha]'s projects with other City departments, but that you should seek further advice if these projects are closely related to work you did while you were employed by the City. Finally, the Board determines that the Ordinance permanently prohibits you from assisting or representing [Alpha], or any other person or entity, in connection with [Alpha]'s scheduled 1999 contract with [Department 1].

We also advise you that Section 2-156-070 of the Ordinance, "Use or Disclosure of Confidential Information," prohibits all current and former employees from using or disclosing any confidential information gained in the course of their City employment. "Confidential information" is defined as any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.

Our determinations in this case are based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts presented are incorrect or incomplete, please notify the Board immediately, as any change could alter the determinations. Other laws or rules may also apply to this situation.

**RELIANCE:** This opinion may be relied upon by (1) any person involved in the specific transaction or activity with respect to which this opinion is rendered and (2) any person involved in any specific transaction or activity indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.

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Darryl L. DePriest  
Chair